

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CRIMINAL NO. 1:09CR33

UNITED STATES OF AMERICA

VS.

WILLIAM HOWARD O'NEIL, JR.

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ORDER

THIS MATTER is before the Court on the Government's motion to unseal the transcript of proceedings held January 9, 2008, and the Defendant's objections thereto.

The Defendant is charged with two counts of perjury in violation of 18 U.S.C. §§ 1621 and 1623. **Bill of Indictment, filed April 7, 2009.** The indictment alleges that Defendant made false material declarations in a status of counsel proceeding held before the Magistrate Judge wherein part of such proceeding was sealed to the United States Attorney. The Government argues that this transcript is needed to present this case to the jury or "[o]therwise, it may become necessary to call either the court reporter or [the Magistrate Judge] as a witness." **Government's Motion,**

at 4. In further support of its argument, the Government states that in the appeal of the related bank robbery case, the Defendant disclosed the contents of the sealed transcript in the joint appendix filed with the Fourth Circuit. *Id.* Therefore, any concern for disclosure of attorney-client information “became moot and the privilege waived upon disclosing the complete transcript to the United States in the form of a Joint Appendix.” *Id.*

Defendant argues that unsealing the transcript would undermine his constitutional rights as the Government seeks to use the transcript “against [him] not as to the status of counsel but as to his plea.” **Defendant’s Opposition, at 1.** However, as stated by the Government, the trial court will determine any evidentiary issues raised by the Defendant regarding the transcript, but the official transcript must first be unsealed.¹

IT IS, THEREFORE, ORDERED that the Government’s motion to unseal the transcript of the status of counsel hearing conducted on January 9, 2008, is **ALLOWED**.

¹ In fact, part of the unsealed transcript is quoted at length in the indictment, which is now part of the public record herein. **See Indictment, supra.**

Signed: July 1, 2009

A handwritten signature in dark ink, appearing to read "L. H. Thornburg", is written over a horizontal line.

Lacy H. Thornburg
United States District Judge

